





UNITED STATES DEPARTMENT OF AGRICULTURE

# AGRICULTURE DECISIONS

DECISIONS OF THE SECRETARY OF AGRICULTURE

ISSUED UNDER THE

REGULATORY LAWS ADMINISTERED BY THE

UNITED STATES DEPARTMENT OF AGRICULTURE

(Including Court Decisions)



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## PREFATORY NOTE

Agriculture Decisions is an official publication designed to facilitate access to decisions and orders issued by the Secretary of agriculture, or officers authorized to act in his stead, in matters arising under laws administered by the Department of Agriculture.

The published decisions principally consist of those issued in formal adjudicatory administrative proceedings conducted for the Department under various statutes and regulations pursuant to the Administrative Procedure Act. Selected court decisions concerning the Department's regulatory programs are also included. The Department is required to publish its rules and regulations in the Federal Register and, therefore, they are not included in Agriculture Decisions.

Consent Decisions entered subsequent to December 31, 1986 are no longer published. However, a list of these decisions is included. (53 F.R. 6999, March 4, 1988.) The decisions are on file and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges.

Decisions are published in order of their issuance or finality under the principal statutes administered by the Department, which are the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*), the Agricultural Marketing Agreement Act of 1937 (U.S.C. § 601 *et seq.*), Animal Quarantine and Related Laws (21 U.S.C. § 111 *et seq.*), the Animal Welfare Act (7 U.S.C. § 2131 *et seq.*), the Federal Meat Inspection Act (21 U.S.C. § 601 *et seq.*), the Grain Standards Act (7 U.S.C. § 1821 *et seq.*), the Horse Protection Act (15 U.S.C. § 1821 *et seq.*), the Packers and Stockyards Act, 1921, (7 U.S.C. § 181 *et seq.*), the Perishable Agricultural Commodities Act, 1930, (7 U.S.C. § 499a *et seq.*), the Plant Quarantine Act (7 U.S.C. § 151 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. § 451 *et seq.*), and the Virus-Serum-Toxin Act of 1913 (21 U.S.C. § 151 *et seq.*).

The published decisions may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket or decision number. Prior to 1942 decisions were identified by docket and decision numbers, e.g., D-578; S. 1150 and the use of such references generally indicates that the decision has not been published in Agriculture Decisions.

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## ANIMAL QUARANTINE AND RELATED LAWS

1st re: SAMMY A. CRIDER and BIG SPRINGS CATTLE COMPANY.  
S.Q. Docket No. 254.

Decision and order issued September 28, 1987.

brucellosis--interstate movement of cattle without certificate--Failure to file answer.

para Rules, for complainant.

respondent, pro se.

Decision and Order issued by Edward H. McGrath, Administrative Law Judge.

### DECISION AND ORDER AS TO SAMMY R. CRIDER

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the interstate movement of cattle because of brucellosis (9 C.F.R. § § 78.1 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 9 C.F.R. § § 70.1 *et seq.* and 7 C.F.R. § § 1.130 *et seq.*

This proceeding was instituted by a complaint filed on April 15, 1986, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that on or about March 19, 1985, the respondents transported at least three (3) cattle interstate from Picayune, Mississippi, to Powderly, Texas, in violation of section 78.9(d)(3) of the regulations (9 C.F.R. § 78.9(d)(3)) in that at least three (3) cattle were not accompanied interstate by a certificate. The respondent Sammy R. Crider failed to file an answer. This failure to file an answer is deemed an admission of the allegations in the complaint and a waiver of hearing. (See 7 C.F.R. § § 1.136(c) and 1.139).

Accordingly, the material facts as to Sammy R. Crider alleged in the complaint are adopted and set forth herein as the findings of fact, and this decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (See 7 C.F.R. § 1.139).

### Findings of Fact

1. Respondent, Sammy R. Crider, is an individual whose address is 319 North Main, Apt. A, Poplarville, Mississippi 39470.

2. On or about March 19, 1985, the respondent moved interstate at least three (3) cattle from Picayune, Mississippi, to Powderly, Texas. The movement was in violation of section 78.9(d)(3) of the regulations (9 C.F.R. § 78.9(d)(3)) because the cattle, which did not go directly to slaughter or to a quarantined feedlot, were not accompanied interstate by a certificate showing prescribed information, as required.

### Conclusions

By reason of the facts contained in the Findings of Fact above, the respondent has violated section 78.9(d)(3) of the regulations (9 C.F.R. § 78.9(d)(3)).

Therefore, the following Order is issued.

### Order

Respondent, Sammy R. Crider, is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to Jaru Raley, Office of the General Counsel, Room 2422 South Building, United States Department of Agriculture, Washington, D.C. 20250-1400, within thirty (30) days from the effective date of this order. This order shall have the same force effect as if entered after a full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 19, 1987.-Editor]

In re: DOUGLAS SASSEEN.

A.Q. Docket No. 75.

Decision and Order issued July 27, 1987.

Brucellosis-Interstate movement of reactor cattle without permit-Admission of material allegations of complaint.

Cynthia Koch, for complainant.

Respondent, pro se.

Decision and Order issued by Edward H. McGrath, Administrative Law Judge.

### DECISION AND ORDER

This is an administrative proceeding for the assessment of a civil penalty under the Act of February 2, 1903, as amended (Act), for a violation of the regulations issued under the Act that govern the interstate movement of cattle because of brucellosis (9 C.F.R. § 78.1 *et seq.*), hereinafter referred to as the regulations.

This proceeding was instituted by a complaint filed on May 23, 1984, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that on or about February 20, 1983, the respondent had moved one brucellosis-reactor cow interstate from West Plains, Missouri, to Grenada, Mississippi, in violation of section 78.7 of the regulations (9 C.F.R. § 78.7), in that the brucellosis-reactor cow was not accompanied by a permit, as required.

In response to the complaint, respondent filed an answer dated June 2, 1984. The answer did not respond to any of the allegations set forth in the complaint. Respondent was apprised of this fact by complainant's attorney, and was informed he could file another answer as the time for answering had not expired. Thereafter, respondent made an oral request to Acting Chief Administrative Law Judge Victor A. Palmer for an extension of time to answer. Respondent's motion was granted, and, thereafter, respondent submitted a second answer. In the second answer dated July 2, 1984, respondent admitted one of the material allegations in the complaint, namely, that the brucellosis-reactor cow was not accompanied by a permit.



DOUGLAS SASSEEN

Specifically, respondent stated that "The bang papers were mistakenly sent to the wrong plant while the cow or cows went to the other plant. This was an honest mistake by the truck drivers. I purchase and ship hundreds of slaughter animals yearly. I am sorry this mistake happened and will do my utmost to see it never happens again." However, in the answer respondent failed to deny or otherwise respond to any of the other material allegations in the complaint. In accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), such failure to deny or otherwise respond to an allegation in the complaint is deemed, for purposes of this proceeding, an admission of said allegation.

In view of the aforementioned facts, respondent has either admitted or is deemed to have admitted the material allegations in the complaint, and, therefore, respondent has waived his right to a hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). This Decision and Order, therefore, is issued pursuant to sections 1.136 and 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. §§ 1.136 and 1.139).

Accordingly, the material facts alleged in the complaint, which respondent has admitted or is deemed to have admitted, are adopted and set forth herein as the findings of fact.

**Findings of Fact**

1. Respondent, Douglas Sasseen, is an individual whose address is Route A, Box 29C, Bakersville, Missouri 65609.
2. On or about February 20, 1983, respondent moved a brucellosis-reactor cow interstate from West Plains, Missouri, to Grenada, Mississippi, in violation of section 78.7 of the regulations (9 C.F.R. § 78.7), in that the brucellosis-reactor cow was not accompanied by a permit, as required.

**Conclusion**

By reason of the facts in the findings of fact set forth above, respondent has violated the Act and regulations promulgated thereunder. Therefore, the following order is issued.

#### Order

Respondent, Douglas Sasseen, is hereby assessed a civil penalty of five hundred dollars (\$500.00) which shall be payable to the "Treasurer of the United States" by a certified check or money order, and shall be forwarded to:

U.S. Department of Agriculture  
Animal and Plant Health Inspection Service  
Field Servicing Office, Accounting Section  
Butler Square West, 5th Floor  
100 North Sixth Street  
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 28, 1987.-Editor]

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## PACKERS AND STOCKYARDS ACT

### DISCIPLINARY DECISIONS

In re: MARKET AGENCIES at St. JOSEPH STOCK YARDS, St. JOSEPH STOCK YARDS; COLT, WALL and BETHEL COMMISSION COMPANY; JOHN CLAY - HEADY, FANNEN LIVESTOCK COMPANY, INC.; LAMBORN - MURRAY - DAVIS and COMPANY; MISSOURI B&K LIVESTOCK COMPANY; A. WARREN ALBERS d/b/a NATIONAL LIVESTOCK COMMISSION CO.; PRODUCERS LIVESTOCK MARKETING ASSOCIATION; AND SWIFT & HENRY LIVESTOCK COMMISSION COMPANY v. EMMET M. CONNOLLEY d/b/a St. JOSEPH LIVESTOCK COMMISSION COMPANY.

P&S Docket No. D-88-2.

Dismissal filed November 2, 1987.

Thomas C. Heinz, for Complainant.  
Respondent, pro se.

*Dismissal issued by Victor W. Palmer, Administrative Law Judge.*

### DISMISSAL OF COMPLAINT AND NOTICE OF INQUIRY

For good cause shown, the Complaint and Notice of Inquiry is hereby dismissed without prejudice.

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In re: RICHARD HALE.

P&S Docket No. 6688.

Decision and Order filed September 23, 1987.

Failure to pay--Insufficient funds checks--Failure to appear at hearing.

Thomas C. Heinz, for Complainant.  
Respondent, pro se.

*Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.*

### DECISION AND ORDER

#### Preliminary Statement

This is an administrative disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the Act, instituted by a complaint filed on March 25, 1986, by the Administrator, Packers and Stockyards and Administration, hereinafter referred to as the complainant. The complaint alleged that respondent failed to pay for livestock when due, failed to pay for livestock, and issued insufficient funds checks in payment for livestock. By reason of these facts, respondent was alleged to have wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondent's answer (due to be filed June 30, 1986, but July 18, 1986) denied all but the jurisdictional allegations of the complaint and alleged several affirmative defenses. On February 20, 1987, Jay D. Sudweeks, Esquire, who had filed the answer on respondent's behalf, withdrew as counsel stating

"that we have had a falling out with our client and cannot get in touch with him at this point, he won't respond, this makes it impossible for me to represent him."

In due course, upon motion of the complainant, a notice of Time and Place of Oral Hearing was issued and service upon respondent was attempted by certified mail. The U.S. Postal Service returned the Notice to the Hearing Clerk of the Department marked, "Returned Unclaimed", Return to Sender. Thereafter, on May 14, 1987, Paul P. Marone, an employee of the United States Department of Agriculture, personally delivered to the residence of respondent at Route 2, Kimberly, Idaho, the following documents: (1) March 11, 1987 letter from Hearing Clerk, Lydia C. Jones; (2) Notice of Date and time of Hearing and Withdrawal of Counsel Jay D. Sidweeks; and (3) Letter from Jay D. Sidweeks withdrawing as counsel for respondent.

Pursuant to Notice, this matter came on for oral hearing at 9:00a.m., on June 18, 1987, in Pocatello, Idaho, before Dorothea A. Baker, Administrative Law Judge. Complainant was represented by Thomas C. Heinz, Esquire, Office of General Counsel, United States Department of Agriculture, Washington, D.C. No one appeared on behalf of the respondent.

Section 1.141(e) of the Rules of Practice governing this proceeding (7 C.F.R. § 1.141(e)) provides in part as follows:

(e) *Failure to appear.* A respondent who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding, and to have admitted any facts which may be presented at the hearing. Such failure by the respondent shall also constitute an admission of all the material allegations of fact contained in the complaint. Complainant shall have an election whether to follow the procedure set forth in § 1.139 of these rules or whether to present evidence, in whole or in part, in the form of affidavits or by oral testimony before the Judge. . . .

As indicated in the Findings of Fact below, complainant elected to introduce testimonial and documentary evidence to prove some of the allegations of the complaint and to rely upon respondent's failure to appear after notice as an admission regarding the remaining allegations of the complaint (7 C.F.R. § 1.141(e)).

#### Findings of Fact

1. (a) Richard Hale, hereinafter referred to as the respondent, is an individual whose business mailing address is Route 2, Box 558, Kimberly, Idaho 83341.

(b) The respondent is, and at all time material herein was:

- (1) Engaged in the business of a market agency, buying and selling livestock in commerce on a commission basis; and
- (2) Registered with the secretary of agriculture as a dealer to buy and sell livestock in commerce for his own account and as a market agency to purchase livestock in commerce on a commission basis. (Answer, ¶ 2)

2. The respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth below, purchased livestock and in purported payment therefor issued checks which were returned unpaid by the bank upon which they were drawn because the

RICHARD HALE

respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks. (7 C.F.R. § 1.141(e))

<u>DATE OF CHECK</u>	<u>PAYEE</u>	<u>AMOUNT</u>
Date not Available	Producers Livestock Marketing Assn.	\$1,621.26
8/28/85	Shoshone Sale Yard, Inc.	9,633.42
9/30/85	Shoshone Sale Yard, Inc.	1,744.70
Date not Available	Producers Livestock Marketing Assn.	1,805.68

3. The respondent, in connection with this operations subject to the Act, on or about the dates and in the transactions set forth in Findings of Fact 2 above, and in the transactions set forth below, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

<u>DATE OF PURCHASE</u>	<u>PAYEE</u>	<u>AMOUNT</u>	
11/14/85	Burley Livestock Comm'n Yards	\$3,041.21	(CX 1)
1/9/86	Burley Livestock Comm'n Yards	963.20	(CX 1)
11/19/85	Producers Livestock Marketing Assn.	2,604.35	(CX 2)
10/1/84	Shoshone Sale Yard, Inc.	4,132.82	(CX 3)
10/8/84	Shoshone Sale Yard, Inc.	268.55	(CX 3)
10/15/84	Shoshone Sale Yard, Inc.	1,048.62	(CX 3)
12/10/84	Shoshone Sale Yard, Inc.	157.50	(CX 3)
8/12/85	Shoshone Sale Yard, Inc.	2,178.99	(CX 3)
9/14/85	Twin Falls Livestock Comm. Co.	499.86	(CX 4)
9/18/85	Twin Falls Livestock Comm. Co.	276.55	(CX 4)
9/21/85	Twin Falls Livestock Comm. Co.	707.13	(CX 4)

9/25/85	Twin Falls Livestock Comm. Co.	916.01	(CX 4)
9/28/85	Twin Falls Livestock Comm. Co.	1,684.81	(CX 4)
10/5/85	Twin Falls Livestock Comm. Co.	737.50	(CX 4)
10/9/85	Twin Falls Livestock Comm. Co.	1,140.25	(CX 4)
10/12/85	Twin Falls Livestock Comm. Co.	37.75	(CX 4)
10/19/85	Twin Falls Livestock Comm. Co.	495.05	(CX 4)
10/23/85	Twin Falls Livestock Comm. Co.	1,388.70	(CX 4)
11/13/85	Twin Falls Livestock Comm. Co.	939.80	(CX 4)
11/20/85	Twin Falls Livestock Comm. Co.	281.65	(CX 4)

4. As of March 3, 1986, there remained unpaid a total of approximately \$33,052.46 for the livestock purchases set forth in Findings of Fact 2 and 3 above. (7 C.F.R. § 1.141(e)).

5. As of June 15, 1987, there remained unpaid a total of approximately \$32,000.00 for the livestock purchases set forth in Findings of Fact 2 and 3 above. (Transcript, p. 20)

6. Respondent's enforcement history with the Packers and Stockyards Administration dates back to 1966 as outlined below:

(a) On November 1, 1966, a consent decision was ordered in P. & S. Docket No. 3724 ordering respondent to cease and desist from failing to pay for livestock purchases and issuing insufficient funds checks for livestock purchases (Transcript, p. 22);

(b) On April 19, 1986, a consent judgment was entered in United States District Court against respondent for violation of the order issued in P. & S. Docket No. 3724. (¶ (a) above). Respondent was permanently enjoined from violating the Secretary's order and ordered to pay a \$500.00 civil penalty (Transcript, p. 23);

(c) On June 22, 1971, in P. & S. Docket No. 4370, respondent consented to the issuance of an order suspending his livestock operations until he acquired a proper bond. The suspending his terminated on August 25, 1971 (Transcript, p. 23);

(d) On August 16, 1984, a complaint was issued in the United States District Court for the District of Idaho, civil number 841343, alleging respondent had failed to file the required annual report with the Packers and Stockyards Administration. As of June 18, 1987, no decision had been issued in the case (Transcript, p. 23);

(e) On May 25, 1985, in P. & S. Docket No. 6219, respondent consented to the issuance of an order suspending his livestock operations until he acquired proper bond coverage and requiring him to pay a \$750.50 civil penalty (Transcript, p. 23); and

(f) On December 26, 1985, the United States Attorney for the District of Idaho was requested to initiate an action against respondent for violating

the order issued in P. & S. Docket No. 6219 (§ (c) above). As of June 18, 1987, no action had been taken on this request (Transcript, p. 23).

#### Conclusions

By reason of the facts stated in Findings of Fact 2 through 5 herein, respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. § § 213(a), 228b). (7 C.F.R. § 1.141(c))

#### Order

Respondent Richard Hale, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay the checks when presented;

2. Failing to pay, when due, for livestock purchases; and

3. Failing to pay for livestock purchases.

Respondent is suspended as a registrant under the Act for a period of five years, provided, however, that upon application to the Packers and Stockyards Administration, a supplemental order may be issued terminating this suspension at any time after the expiration of 180 days upon demonstration that all unpaid livestock sellers have been paid in full and upon demonstration by the respondent that he has an adequate bond or its equivalent as ordered in P. & S. Docket No. 6219, and provided further that this order may be modified upon application to the Packers and Stockyards Administration to permit respondent's salaried employment by another registrant after the expiration of the 180 day period of suspension.

The provisions of this order shall become effective on the sixth day after service on this decision on the respondent.

Copies of this decision shall be served upon the parties.

[This decision and order became final November 2, 1987.-Editor]

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In re: JACKIE D. REYNOLDS.

P&S Docket No. 6913.

Decision and Order issued October 7, 1987.

Market agency--Operation without adequate bond or equivalent--Failure to file answer.

Thomas C. Heinz, for Complainant.

Respondent, pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

#### DECISION AND ORDER UPON ADMISSION OF FACTS BY REASON OF DEFAULT

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Administrator, Packers and Stockyards Administration, United States Department of Agriculture,

charging that the respondent willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Copies of the Complaint and Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served on the respondent by certified mail. Respondent was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the rules of Practice (7 C.F.R. § 1.139).

#### Findings of Fact

1. (a) Jackie D. Reynolds, hereinafter referred to as the respondent, is an individual whose business mailing address is Route 4, Box 63, Quinlan, Texas 75474.

2. (b) The respondent is, and at all times material herein was:

(1) Engaged in the business of buying livestock in commerce on a commission basis; and

(2) Registered with the Secretary of Agriculture as a dealer to buy livestock in commerce on a commission basis. Such registration has been inactive since 1979.

3. Respondent was notified by certified mail received April 1, 1987, that it was necessary for him to acquire a surety bond or its equivalent in the amount of \$10,000.00 before continuing his livestock operations subject to the Act and the regulations. Respondent was further notified that if he continued his livestock operations under the Act without providing adequate bond coverage or its equivalent, he would be in violation of section 312(n) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the regulations. Notwithstanding such notice, respondent has continued to engage in the business of a market agency buying livestock in commerce on a commission basis without maintaining an adequate bond or its equivalent as required by the Act and the regulations.

#### Conclusions

By reason of the facts found in Finding of Fact 2 herein, respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

#### Order

Respondent Jackie D. Reynolds, his agents and employees, directly or through any corporate or other device, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.



JACK TREWARTH d/b/a TREWARTH CATTLE COMPANY

Respondent is suspended as a registrant under the Act until he complies fully with the bonding requirements under the Act and the regulations. When respondent demonstrates that he is in full compliance with such bonding requirements, a supplemental order will be issued in this proceeding terminating this suspension.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondent is hereby assessed a civil penalty in the amount of Five Hundred Dollars (\$500.00).

This decision and order shall become final without further proceedings 35 days after service thereof unless appealed to the Judicial Officer within 30 days after service (7 C.F.R. § § 1.139, 1.145).

Copies hereof shall be served on the parties.

[This decision and order became final November 17, 1987.--Editor.]

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In re: JACK TREWARTH d/b/a TREWARTH CATTLE COMPANY.  
P&S Docket No. 6815.  
Supplemental Order filed November 9, 1987.

Dennis Becker, for Complainant.

Craig Raby, Sioux City, Iowa, for Respondent.

*Supplemental Order issued by Edward H. McGrall, Administrative Law Judge.*

**SUPPLEMENTAL ORDER**

On June 29, 1987, an Order was issued in the above-captioned matter which, inter alia, suspended respondent as a registrant under the Packers and Stockyards Act for five years, provided, however, that upon application of the complainant, such suspension could be terminated after 120 days upon demonstration by the respondent that he had paid all unpaid sellers of livestock in full. More than 120 days having elapsed from the date of the Order, and upon application of the complainant that the suspension be lifted because all unpaid sellers have now been paid, it is found for good cause that the suspension should be terminated, effective immediately.

IT IS HEREBY ORDERED that the suspension provision of the Order issued June 29, 1987, is terminated, effective immediately. The Order shall remain in effect in all other respects.

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In re: CLUM "BUCK" YOCHUM, JR.  
P&S Docket No. 6841.  
Supplemental Order filed November 19, 1987.

Peter V. Train, for Complainant.  
Respondent, pro se.

*Supplemental Order issued by Victor W. Palmer, Administrative Law Judge.*

#### SUPPLEMENTAL ORDER

On September 18, 1987, an order was issued in the above-captioned matter which, *inter alia*, suspended respondent as registrant under the Act until he complies fully with the bonding requirements under the Act and the regulations.

Respondent is presently in compliance with the bonding requirements under the Act and the regulations. Accordingly,

IT IS HEREBY ORDERED that the suspension provision of the order issued September 18, 1987, is terminated. The order shall remain in full force and effect in all other respects.

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I. T. THURBER d/b/a THURBER LIVESTOCK COMPANY v. DICK HOAGLAND d/b/a  
DICK HOAGLAND & SON

REPARATION DECISIONS

I. T. THURBER d/b/a THURBER LIVESTOCK COMPANY v. DICK  
HOAGLAND d/b/a DICK HOAGLAND & SON.

P&S Docket No. 6830.

Order issued November 5, 1987.

Dennis Becker, Presiding Officer,

Complainant, pro se.

Allen J. Kincaid, Brush, Colorado, for Respondent.

Order issued by Donald A. Campbell, Judicial Officer.

ORDER

Preliminary Statement

This is a reparation proceeding under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*). A formal complaint was filed on August 1, 1986, in which complainant claimed respondent owed it \$5,693.09 with respect to the sale of livestock in interstate commerce by complainant to respondent.

A copy of the complaint and a copy of the report of investigation prepared by the Packers and Stockyards Administration of this Department and filed in this proceeding pursuant to the practice (9 CFR § 202.40) were served on respondent on December 5, 1986. Respondent's answer was timely filed.

An oral hearing was held August 4, 1987, in Denver, Colorado, before Dennis Becker of the Office of the General Counsel. At the termination of the hearing the parties stipulated and agreed that respondent would pay complainant by September 3, 1987, \$2,300 in full settlement of complainant's claim, and that if respondent failed to do so, an Order should be issued by this tribunal in favor of complainant for that amount. Respondent has not paid. Therefore, the following findings and Order shall be issued.

Findings

1. Complainant at all times material herein was engaged as a farmer in Chowchilla, California.

2. Respondent at all times material herein was engaged in business as either a dealer or a market agency as defined in the Act, with his place of business at Sterling, Colorado.

3. During May and June 1986 complainant shipped cattle to respondent or his customer, at the direction of respondent.
4. Respondent has agreed he is liable to complainant in the sum of \$2 no part of which has been paid.
5. Respondent's failure to pay this amount plus interest is a violation of the Packers and Stockyards Act.

**Order**

Respondent Richard Hoagland, doing business as Richard Hoagland Son shall pay to complainant within 30 days of the date of this Order, \$2 plus interest thereon at the rate of 13% per annum from August 1, 1986, to date of payment.

Copies hereof shall be served upon the parties.

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# PERISHABLE AGRICULTURAL COMMODITIES ACT

## DISCIPLINARY DECISIONS

In re: LARRY ELMER, INC.

PACA Docket No. 2-7571.

Decision and Order Issued September 24, 1987.

*Failure to make full payment promptly - Admission of factual allegations of complaint.*

Sharlene Lassiter, for complainant.

Carl K. Osborne, Los Angeles, California, for respondent.

*Decision and Order issued by Edward H. McGrail, Administrative Law Judge.*

## DECISION AND ORDER

### Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*), hereinafter referred to as the "Act", instituted by a complaint filed on July 2, 1987, by the Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. It is alleged in the complaint that during the period April 6, 1983 through April 11, 1984, respondent purchased, received and accepted, in interstate and foreign commerce, from 7 sellers, 17 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices or balances thereof in the total amount of \$98,995.75.

A copy of the complaint was served on the respondent. Respondent filed an answer to the complaint on August 3, 1987, in which it admitted to the factual allegations. Consequently, complainant filed a motion for the issuance of a decision.<sup>1</sup> Therefore, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### Findings of Fact

1. Larry Elmer, Inc., hereinafter referred to as the respondent, is a corporation whose business mailing address is P.O. Box 45586, Los Angeles, California 90045.

2. Pursuant to the licensing provisions of the Act, license number 780837 was issued to respondent on March 1, 1978. The license was renewed annually, but terminated on March 1, 1985, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)), when respondent failed to pay the required annual license fee.

3. As more fully set forth in paragraph 5 of the complaint, during the period April 6, 1983, through April 11, 1984, respondent purchased, received and accepted in interstate and foreign commerce, from 7 sellers, 17 lots of fruits and vegetables, all being perishable agricultural commodities, but failed

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<sup>1</sup> Response to this motion has not been made within the allotted time. See 7 C.F.R. section 1.143(d).

to make full payment promptly of the agreed purchase prices, or part thereof, in the total amount of \$98,995.75.

#### Conclusions

Respondent's failure to make full payment promptly with respect to transactions set forth in Finding of Fact No. 3, above, constitutes repeated and flagrant violations of Section 2 of the Act (7 U.S.C. § 499b) which the Order below is issued.

#### Order

A finding is made that respondent has committed willful, flagrant repeated violations of Section 2 of the Act (7 U.S.C. § 499b), and the circumstances set forth above, shall be published.

This Order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Decision will become final without further proceedings thirty-five days after service, unless appealed to the Secretary by a party to the proceeding within thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies hereof shall be served upon the parties.

[This decision and order became final November 3, 1987.-Editor]

In re: G & M PRODUCE, INC.

PACA Docket No. 2-7576.

Decision and Order issued September 28, 1987.

Failure to make full payment promptly - Failure to file answer.

Edward M. Silverstein, for Complainant.

Respondent, pro se.

Decision issued by Estate S. Bernstein, Administrative Law Judge.

#### DECISION AND ORDER

##### Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a et seq.) hereinafter referred to as the "Act", instituted by a complaint filed on July 7, 1987, by Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. It is alleged in the complaint that during the period June through October 1986, respondent purchased, received and accepted in interstate commerce, from 10 sellers, 60 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices or balances thereof in the total amount of \$220,480.65.

A copy of the complaint was served upon respondent which complaint has not been answered. The time for filing an answer having run, and upon motion of the complainant for the issuance of a default order, the following

G & M PRODUCE, INC.

Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. 1.139).

**Findings of Fact**

1. Respondent, G & M Produce, Inc., is a corporation, whose address is 1070 South San Pedro, Los Angeles, California 90015.

2. Pursuant to the licensing provisions of the Act, license number 851441 was issued to respondent on June 24, 1985, was renewed annually, presently is in effect, and was next subject to renewal on or before June 24, 1987.

3. As more fully set forth in paragraph 5 of the complaint, during the period June through October 1986, respondent purchased, received and accepted in interstate and foreign commerce, from 10 sellers, 60 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$220,480.65.

**Conclusions**

Respondent's failure to make full payment promptly with respect to the 60 transactions set forth in Finding of Fact No. 3, above, constitutes willful, repeated and flagrant violations of Section 2 of the Act (7 U.S.C. 499b), for which the Order below is issued.

**Order**

Respondent's license is revoked.

This order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings thirty-five days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. 1.139 and 1.145).

Copies hereof shall be served upon the parties.

[This decision and order became final November 11, 1987.- Editor]

In re: JACK'S PRODUCE CO., INC.  
PACA Docket No. 2-7595,  
Decision and Order Issued October 19, 1987.

Failure to make full payment promptly - Failure to file answer.

Andrew Y. Stanton, for complainant.

James R. DeFew, Bloomington, Illinois, for respondent.

Decision and order issued by Edwin S. Bennett, Administrative Law Judge.

## DECISION AND ORDER

### Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a *et seq.*) hereinafter referred to as the "Act", instituted by a complaint filed on July 22, 1987, by the Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. It is alleged in the complaint that during the period September 1986 through January 1987, respondent purchased, received and accepted, in interstate and foreign commerce, from eight sellers, 102 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$196,370.00.

A copy of the complaint was served upon respondent which complaint has not been answered. The time for filing an answer having run, and upon the motion of the complainant for the issuance of a Default Order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. 1.139).

### Findings of Fact

1. Respondent, Jack's Produce Co., Inc., is a corporation, whose address is 1703 South Morris Avenue, Bloomington, Illinois 61701.

2. Pursuant to the licensing provisions of the Act, license number 840725 was issued to respondent on February 14, 1984. The license was renewed annually, but terminated on February 14, 1987, pursuant to Section 4(a) of the Act (7 U.S.C. 499(a)) when respondent failed to pay the required annual license fee.

3. As more fully set forth in paragraph 5 of the complaint, during the period September 1986 through January 1987, respondent purchased, received, and accepted in interstate and foreign commerce, from eight sellers, 102 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$196,370.00.

### Conclusions

Respondent's failure to make full payment promptly with respect to the 102 transactions set forth in Finding of Fact No. 3, above, constitutes willful, repeated and flagrant violations of Section 2 of the Act (7 U.S.C. 499b), for which the Order below is issued.



TRI-COUNTY WHOLESALE PRODUCE CO., INC.

**Order**

A finding is made that respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. 499b), and the facts and circumstances set forth above, shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. 1.139 and 1.145).

Copies hereof shall be served upon the parties.

[This decision and order became final November 30, 1987.-Editor]

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**In re: HARRY KLEIN PRODUCE, CORP.**

PACA Docket No. 2-6992.

Order issued November 30, 1987.

Edward M. Silverstein, for complainant.

Stephen P. McCarron, Silver Spring, Maryland, for respondent.

Order issued by Donald A. Campbell, Judicial Officer.

**REMOVAL OF STAY ORDER**

The stay order previously issued in this proceeding pending the outcome of proceedings for judicial review is hereby lifted. The Decision and Order previously issued on February 6, 1987, shall become effective on the 30th day after service of this order on respondent.

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**In re: TRI-COUNTY WHOLESALE PRODUCE CO., INC.**

PACA Docket No. 2-6300.

Order issued November 2, 1987.

Dennis Becker, for complainant.

Stephen P. McCarron, Silver Spring, Maryland, for respondent.

Order issued by Donald A. Campbell, Judicial Officer.

**REMOVAL OF STAY ORDER**

The stay order previously issued in this proceeding pending the outcome of proceedings for judicial review is hereby lifted. The Decision and Order previously issued on January 27, 1986, shall become effective on the 30th day after service of this order on respondent.

## REPARATION DECISIONS

**B.G. ENTERPRISES, INC., a/t/a B.G. SALES COMPANY v. THE PIONEER  
FRUIT & COMMISSION COMPANY.**

PACA Docket No. 2-7031.

Decision and order issued November 10, 1987.

**Burden of proof - Failure to agree on price.**

Where the parties fail to agree on a price for produce, the Secretary will infer the parties intended the price to be reasonable. The party obliged to prove price has the burden of proving the price is reasonable.

Edward M. Silverstein, Presiding Officer.

Complainant, pro se.

Respondent, pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

## DECISION AND ORDER

### Preliminary Statement

This is a reparation proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.). A timely complaint was filed in which complainant seeks reparation against respondent in the amount of \$3,058.75 in connection with a transaction, in interstate and foreign commerce, involving mixed produce, all of which were perishable agricultural commodities.

Each party was served with a copy of the Department's report of investigation. In addition, respondent was served with a copy of the complaint, and filed an answer thereto denying any further liability to complainant.

As the amount in dispute was less than \$15,000.00, the shortened procedure, provided in section 47.20 of the Rules of Practice (7 C.F.R. § 47.20), was followed. Under this procedure, the verified pleadings of the parties are considered as part of the evidence in the case, as is the Department's report of investigation. In addition, the parties were given the opportunity to submit further evidence by way of verified statements, but neither party did so. Also, neither party filed a brief.

### Findings of Fact

1. Complainant, B.G. Enterprises, Inc., is a corporation, also trading as B.G. Sales Company, whose mailing address is P.O. Box 1806, Nogales, Arizona 85628.
2. Respondent, The Pioneer Fruit & Commission Co., is a corporation whose address is 101 Reserve Road, Hartford, Connecticut 06114. At all material times, respondent was licensed under the Act.
3. On or about April 11, 1984, complainant sold a trucklot of mixed Mexican produce to respondent consisting of the following items: 216 cartons of super select cucumbers @ \$10.00 per carton, 144 cartons of select cucumbers @ \$10.00 per carton, 128 watermelons @ 16¢ per pound, 108 lugs of yellow squash @ \$8.00 per lug, 108 lugs of green squash @ \$8.00 per lug, 72 cartons of acorn squash on an open price basis, and 180 flats of cherry tomatoes @ \$8.00 per flat plus 50¢ per carton or lug for palletizing and

cooling. At the time when the parties negotiated this transaction, respondent asked complainant to contact it if the amount of produce involved did not fill the truck, but respondent expected the produce ordered to fill 22 pallets and to weigh about 46,000 pounds which would fill a truck. Complainant contacted respondent, on April 12, 1984, and suggested an alternative bill of lading for the transaction. The parties discussed the proposed bill of lading, and respondent agreed to accept the differences in the numbers of cartons or lugs suggested by complainant, and to accept 120 lugs of saladette tomatoes as an additional item. Respondent did tell complainant that it had no market for the number of lugs of green squash or the saladette tomatoes which complainant wished to ship to it. Complainant assured the respondent that it could accept the additional produce without any "worry." There was no agreement during this conversation, or later, as to the price for the saladette tomatoes.

4. On or about April 12, 1984, the complainant shipped respondent the following items and invoiced it as indicated: 199 cartons of super select cucumbers @ \$12.00 per carton (\$2,388.00), 123 cartons of select cucumbers @ \$11.00 per carton (\$1,353.00), 128 watermelons (9,429 pounds) @ 16¢ per pound (\$1,508.64), 52 lugs of yellow squash @ \$8.00 per lug (\$416.00), 244 lugs of green squash @ \$8.00 per lug (\$1,952.00), 36 cartons of acorn squash on an open price basis, 180 flats of cherry tomatoes @ \$8.00 per flat (\$1,440.00), 120 lugs of tomatoes saladettes @ \$6.00 per lug (\$720.00), plus \$32.00 for precooling the watermelons and \$477.00 for palletizing and precooling the remainder of the produce, for a total f.o.b. invoice price of \$8,933.64 plus the value of the 36 cartons of acorn squash.

5. After arrival of the produce, on or about April 18, 1984, some of the produce involved were the subject of federal inspections. On that date, the following items, *inter alia*, were inspected with, as reported on Certificates Nos. B 106545, 6, and 7, the following, in pertinent part, results:

(a) 52 lugs of yellow squash whose quality was reported as follows: "Grade defect 36 to 43%, average 39% scars." The yellow squash failed to grade U.S. No. 1, despite being in good condition, because of the grade defects; and

(b) Two lots, totaling 193 cartons, of super select cucumbers were inspected.<sup>1</sup> The first lot had an average of 26% grade defects, and the second lot had an average of 24% grade defects. Each lot failed to grade U.S. No. 1, despite being in good condition, because of grade defects.

6. One day later, on April 19, 1984, 53 lugs of green squash were the subject of a federal inspection.<sup>2</sup> After the inspection, certificate No. B 106553 was issued on which the condition of the 53 lugs of green squash was listed as

<sup>1</sup> There is no explanation as to why only 193 cartons of cucumbers were inspected when 199 cartons were shipped, received, and accepted.

<sup>2</sup> It is possible that these 53 lugs were part of the produce which was inspected on the previous day. If so, on April 18, 1984, the inspector found no decay and graded the green squash U.S. No. 1.

follows: "Mostly firm. No decay in most lugs, in many 4 to 54%, average 11% GRAY MOLD ROT in various stages." No conclusion was noted as having been reached regarding the grade of the green squash.

7. Respondent sold 74 lugs of saladette tomatoes for an average price of \$3.00 per lug.

8. On May 2, 1984, an inspection was made on a portion of the subject lot of produce prior to that portion being dumped. A certificate was issued thereafter (No. B 106591) which indicated the following results:

(a) Tomato saladettes, 46 lugs, average 85% soft, average 15% Alterni Rot;

(b) Select cucumbers, 36 crates, average 50% soft and shriveled average 50% decay, all yellow; and

(c) Green squash, 203 lugs, 100% decay.

9. The produce referred to in ¶8 above was dumped.

10. At some time after May 6, 1984, complainant agreed to modify the prices for some of the subject produce.

11. On some unknown date after May 6, 1984, complainant re-invoiced respondent for the subject produce as follows:

<u>Item</u>	<u>Amount</u>	<u>Unit Price</u>	<u>Total Price</u>
Green Squash	244	\$8.00	\$1,952.00
Cherry Tomatoes	180	8.00	1,440.00
Select Cucumbers	[36]	-	DUMPED
Select Cucumbers	87	5.00	435.00
Super Select Cucumbers	199	5.00	995.00
Saladette Tomatoes	120	6.00	720.00
Yellow Squash	52	5.00	260.00
Watermelons	9,429 #	.16	1,508.64
Acorn Squash	36	4.00	144.00
Palletizing/Cooling	4	8.00	32.00
Palletizing/Cooling	918	.50	459.00
<b>TOTAL</b>			<b>\$7,945.64</b>

12. On or about June 5, 1984, respondent paid complainant \$4,886.89 with respect to the subject transaction.

13. Also, on June 5, 1984, complainant rebilled respondent for the balance of \$3,058.75 it claims was due for the subject transaction.

14. On April 19, 1984, the market price for green squash on the Hunts Point Terminal Market in New York ranged from \$3.00-4.00.

15. An informal complaint was filed on September 24, 1984, which was within nine months after the cause of action herein accrued.

#### Conclusions

The dispute between the parties centers upon two of the items shipped by complainant to respondent, to wit: 136 of the 244 lugs of green squash and the 120 lugs of saladette tomatoes. In the contract originally negotiated by the parties, respondent had agreed to purchase only 108 lugs of green squash and no saladette tomatoes. Yet, despite having told complainant

that it had no market for these added items, respondent agreed to, and did, accept them without negotiating any kind of protection for itself. However, the record does not indicate that the parties negotiated any price for these items. In such a circumstance, i.e., where produce is received and accepted without the parties agreeing as to price, it is assumed that the parties agreed to a reasonable price. *Auster Co. v. G. Rini's Son*, 12 Agric. Dec. 246 (1953). The burden of proving a reasonable price is on the complainant in this case, i.e., the seller of the merchandise. *Sessions v. Universal Fruit & Produce*, 19 Agric. Dec. 1177 (1960). Although complainant has failed to submit any evidence as to the reasonable price for these items, the record does contain sufficient evidence for us to reach conclusions as to reasonable prices for them.

With regard to the saladette tomatoes, we find that the reasonable price is \$3.00 per lug, i.e., the price which respondent received for resale of 74 of the 120 lugs, less 15% for losses in handling, expenses and profit. See *Harry Finerman & Co. v. H. Glick & Co.*, 7 Agric. Dec. 563 (1948). The total price, therefore, due complainant for the saladette tomatoes accepted by respondent is \$306.00.<sup>3</sup>

With regard to the 136 extra lugs of green squash shipped by complainant, we find that a reasonable price, in the absence of any evidence of timely resale, is \$3.00 per lug, or the lowest price quoted on the Hunts Point Terminal Market in New York, the nearest major market to respondent's location, on April 19, 1984. The respondent is, therefore, obligated to complainant for the 136 extra lugs of green squash in the total amount of \$476.00, or \$3.00 per lug plus 50¢ per lug for palletizing and cooling.<sup>4</sup>

It should be noted that the fact that respondent had to dump 203 lugs of green squash and 46 lugs of saladette tomatoes is irrelevant because, as shown by the April 18, 1984, inspection certificates, the produce was received in good condition. That 53 lugs of green squash may have been reinspected the next day and showed significant damage is also irrelevant because such a drastic change, that is, on April 18, 1984, the inspector found the green squash to be free from decay while on the next day the inspector found the decay to range from 4 to 54%, and to average 11%, is not likely without extremely poor handling by respondent.<sup>5</sup>

In view of the above, we find that respondent was obligated to complainant in the total amount of \$6,791.64 with respect to the subject

<sup>3</sup> The cost of palletizing and cooling was considered in reaching this figure.

<sup>4</sup> Of course, it remains obligated to complainant for the agreed contract price, \$8.00 per lug plus 50¢ per lug for palletizing and cooling, for the 108 lugs of green squash it originally had agreed to purchase.

<sup>5</sup> This great difference also might raise significant questions as to the identity of the green squash inspected on April 19, 1984, as it seems possible that the lot inspected that day could not have been the same lot inspected the day before.

shipment. It has paid complainant \$4,886.89, and, therefore, remains obligt to complainant in the amount of \$1,904.75. Respondent's failure to complainant this amount is a violation of section 2 of the Act for w/ reparation, plus interest, should be awarded.

#### Order

Within thirty days from the date of this order, respondent shall complainant, as reparation, \$1,904.75 plus interest in the amount of 13% annum from July 1, 1984, until paid.

Copies of this order shall be served upon the parties.

**BIANCHI & SONS PACKING CO. v. WEST COAST PRODUCE SALE INC.**

PACA Docket No. 2-6828.

Decision and Order issued November 10, 1987.

#### Proof of damages.

Where complainant alleged a larger amount than respondent admitted it owed, and documt reflected larger amount was invoiced, respondent held liable because it failed to explain t it owed the lesser amount.

John J. Casey, Presiding Officer.

Thomas R. Oliveri, Newport Beach, California, for complainant.

Richard R. Gilbert, Visalia, California, for respondent.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

#### DECISION AND ORDER

##### Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. 499a *et seq.* A timely complain was filed in which complainant seeks a reparation award against responde in the amount of \$20,957.50 in connection with five shipments of tomatoes interstate commerce.

A copy of the report of investigation prepared by the Department w/ served on each party. A copy of the formal complaint was served c respondent, which filed an unverified letter acknowledging liability but in lesser amount than was claimed.

An order was issued for payment of the total undisputed amount leaving the case pending only as to the difference.

Since no party requested an oral hearing, the shortened procedure provided in section 47.20 of the Rules of Practice, 7 C.F.R. §47.20, applicable. Pursuant to that procedure, the report of investigation is considered a part of the evidence, as are the verified complaint and answer. Each party was given notice of opportunity to submit additional evidence i the form of verified statements, and to file briefs, but nothing was receive in response to those notices.

##### Findings of Fact

1. Complainant at all times material herein was a corporation with a place of business at Merced, California and licensed under the Act.

BLANCHI & SONS PACKING CO. v. WEST COAST PRODUCE SALES, INC.

2. Respondent at all times material herein was a corporation with a place of business at Visalia, California and licensed under the Act.

3. On the dates in 1984 as shown below, tomatoes were sold by complainant to respondent for FOB prices, also as shown below. They were shipped from California, one shipment to Kent, Washington, the others to Anchorage, Alaska.

Shipping Date	Complainant's Invoice Number	Complainant's Invoice Amount	Respondent's Acknowledged Debt	Difference
8/04	25450.00	\$5,583.60	\$5,583.60	
8/11	25503.00	3,899.80	3,723.15	\$176.65
8/17	25703.00	5,678.10	5,655.60	22.50
8/25	22782.00	2,635.20	2,491.20	144.00
9/15	25987.00	3,160.80	3,160.80	-0-

Total: \$343.15

4. An informal complaint was received by the Department on January 25, 1985, which was within nine months of accrual of the cause of action alleged therein.

#### Conclusions

The five shipments and the amounts owed for each were shown in the complaint, which was verified. Respondent acknowledged debt for them but in a lesser amount. Justification for the difference, if any, is not even alleged, let alone established, by respondent. On this basis, the record shows the full amounts claimed by complainant to have been owed by respondent. A reparation order will accordingly be issued for the difference.

On the basis of the above, respondent's failure to pay in full for the tomatoes is found to be a violation of Section 2(4) of the Act, 7 U.S.C. 499b(4), for which reparation should be awarded with interest.

#### Order

Within 30 days of the date of this order, respondent shall pay to complainant as reparation \$343.15 with interest thereon at the rate of 13% per annum, on \$199.15 from October 1, 1984, on \$144.00 from November 1, 1984, until paid.

Copies of this order shall be served on the parties.

EVERKRISP VEGETABLES, INC. v. J. RANDAZZO & SONS, INC.  
PACA Docket No. 2-6982.  
Order Issued November 12, 1987.

*Order issued by Donald A. Campbell, Judicial Officer.*

ORDER GRANTING RECONSIDERATION AND AMENDING  
PRIOR ORDER

In this reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*), an order was issued on September 2, 1987, awarding reparation to complainant against respondent in the amount of \$2,868.45. On September 14, 1987, within the time allowed in the Rules of Practice (See 7 C.F.R. § 47.24(a)), complainant filed a petition for reconsideration, and the order of September 2, 1987, was automatically stayed pending the issuance of a further order in this proceeding.

In its petition, complainant contends that the order of September 2, 1987, is in error in the computation of damages in that respondent was allowed damages which were \$1,496.20 in excess of the proper amount. We have reconsidered the order and find that complainant's contentions are correct.

Respondent's basic damages, correctly calculated as \$7,294.00, were erroneously increased to \$8,582.00 by the addition thereto as consequential damages, of handling fees, unloading fees, and a 15% commission. Also, the sentence explaining the addition was inadvertently omitted from the decision. However, it is clear that the addition of such expenses as consequential damages was incorrect, since such expenses would have been incurred by respondent regardless of the breach, and were not in consequence thereof. See D.C.C. §§ 2-714 & 2-715, and *Anthony Farms v. Empire Foods*, 33 Agric. Dec. 716 (1974).

Respondent's basic damages of \$7,294.00 should have been deducted from the \$21,312.00 f.o.b. purchase price, leaving \$14,018 as respondent's basic liability to complainant. Since respondent had previously paid complainant \$9,653.30, the amount still due and owing from respondent to complainant should have been computed as \$4,364.70. Our decision and order of September 2, 1987, is hereby amended to accord with these conclusions. The order is further amended by changing the amount of reparation awarded from \$2,868.45 to \$4,364.70, with interest thereon at the rate of 13% per annum, from July 1, 1984, until paid. Such reparation shall be paid within 30 days from the date of this order.

Copies of this order shall be served upon the parties.

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**A.S. HERLONG & CO. v. CHAPMAN PRODUCE CO., INC.**

**FISHER FARMS, INC. v. H. HALL & CO., INC.**

**PACA Docket No. 2-7657.**

**Order Issued November 5, 1987.**

*Order issued by Donald A. Campbell, Judicial Officer.*

**REPARATION ORDER**

**(Summarized)**

In its answer to the complaint, respondent admitted the material allegations of the complaint, including indebtedness to the complainant. However, respondent alleged in its answer that the amount of indebtedness had been reduced to \$22,553.46. Complainant was given an opportunity to dispute respondent's allegation that the indebtedness had been reduced but failed to do so.

Accordingly, respondent was ordered to pay complainant, as reparation, \$22,553.46 plus 13 percent interest thereon per annum from December 1, 1986, until paid.

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**GRO WEST, INC. v. CHAPMAN PRODUCE CO., INC.**

**PACA Docket No. R-88-8.**

**Order Issued November 2, 1987.**

*Order issued by Donald A. Campbell, Judicial Officer.*

**REPARATION ORDER**

**(Summarized)**

In its answer to the complaint, respondent admitted the material allegations of the complaint, including the indebtedness claimed by complainant.

Accordingly, respondent was ordered to pay complainant, as reparation, \$1,987.50, plus 13 percent interest thereon, per annum, from January 1, 1987, until paid.

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**A.S. HERLONG & CO. v. CHAPMAN PRODUCE CO., INC.**

**PACA Docket No. R-88-9.**

**Order Issued November 2, 1987.**

*Order issued by Donald A. Campbell, Judicial Officer.*

**REPARATION ORDER**

**(Summarized)**

In its answer to the complaint, respondent admitted the material allegations of the complaint, including the indebtedness claimed by complainant.

Accordingly, respondent was ordered to pay complainant, as reparation, \$37,771.72, plus interest thereon at the rate of 13 percent, per annum, from March 1, 1987, until paid.

LYN-DE FARMS, INC. v. MICHAEL PREVOR AND SYDNEY PREVOR  
d/b/a PREVOR MARKETING INTERNATIONAL.  
PACA Docket No. 2-6926.

Decision and Order issued November 10, 1987.

USDA inspection at expense of requesting party.

Where complainant contended that transaction continued to be a sale at the invoice price, and respondent contended that it was changed to a consignment, complainant's contention held not established by the evidence in the record. Where USDA inspection was requested by respondent, it was held to be at respondent's request; charge to complainant for it held violative.

John J. Casey, Presiding Officer.  
Thomas R. Oliver, Newport Beach, California, for complainant.  
Barry Prevor, Bronx, New York, for respondent.  
Decision and order issued by Donald A. Campbell, Judicial Officer.

## DECISION AND ORDER

### Preliminary Statement

This is a reparation proceeding under the perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. 499a *et seq.* A timely complaint was filed in which complainant seeks a reparation award against respondents in the amount of \$2,354.81, in connection with a shipment of lettuce in interstate commerce.

A copy of the report of investigation prepared by the Department was served on each party. A copy of the formal complaint was served on respondents, who filed an answer thereto, denying liability.

Since the amount claimed as damages does not exceed \$15,000.00, the shortened procedure provided in section 47.20 of the Rules of Practice, 7 C.F.R. §47.20, is applicable. Pursuant to that procedure, the report of investigation is considered a part of the evidence, as are the verified complaint and answer. Each party was given notice of opportunity to submit additional evidence in the form of verified statements, and to file briefs. Such evidence, and a brief, were received from complainant only, not from respondents.

### Findings of Fact

1. Complainant at all times material herein was a corporation with a place of business at Blythe, California and licensed under the act.
2. Respondents at all times material herein were doing business as Prevor Marketing International with a place of business at Bronx, New York and licensed under the Act.
3. In December of 1984, a sale of lettuce was negotiated between two brokers, Tri-Points Western of Aptos, California and Ball Brokerage Company of Scranton, Pennsylvania, not parties herein, from complainant to

LYN-DE FARMS, INC. v. MICHAEL & SYDNEY PREVOR d/b/a  
PREVOR MARKETING INTERNATIONAL

respondents, of 918 cartons lettuce 24's at \$3.00, plus .65 for vacuum cooling, plus .15 brokerage, plus \$22.50 for a Ryan temperature recorder, for a total price of \$3,510.90 FOB.

4. Complainant issued an invoice, and the Tri-Points firm issued a confirmation to complainant and respondents, reflecting the above.

5. The lettuce was shipped by truck, departing from Blythe, California on Monday, December 3.

6. At respondents' request, the lettuce was USDA inspected on Monday, December 10, at respondents' place of business. The temperature range was 37° to 38°, and quality and condition were as follows:

Mostly Fresh and Crisp. Wrapper leaves No Decay. Head leaves. 1 to 4 heads per carton average 10% damage by discoloration following Bruising scattered throughout pack. 1 to 2 heads per carton average 6% damage by Tip Burn. 2 to 5 decayed heads per carton average 15% Bacterial Soft Rot in various stages affecting 1 to 2 leaves.

7. Respondents through the above-named Ball firm promptly acted to notify complainant of the condition of the produce on arrival.

8. In a phone call on Wednesday, December 12, at about 2:30 P.M., complainant by agent gave directions that respondents should sell the lettuce and forward copies of the USDA inspection report, the Ryan temperature recording tape, and respondents' accounting of the sale. He also promised that complainant would settle on a price after review of those documents.

9. The Tri-Points firm then promptly issued, to complainant and respondents, a second confirmation of the same sale showing, in the space marked "unit price:"

Was \* \* \* \$3.00/\$.65 Ctg/\$.15 Brokerage

Now \* \* \* Receiver to Sens (sic) Account Sales Fed  
Inspection Ryan Tape Per George Zinno & C.A. Reiman  
2:40 P.M. 12-12-84

10. On or about January 5, 1985, respondents forwarded to complainant \$1,156.09 by check, together with an account of sale which reflected sale of the lettuce on consignment for complainant's account, and showing proceeds, less commission and expenses as usual, less \$35.00 USDA inspection charge, in that amount. Respondents also forwarded copies of both confirmations issued by the Tri-Points firm.

11. An informal complaint was received by the Department on January 18, 1985, which was within nine months of accrual of the cause of action alleged therein.

### Conclusions

Certain lettuce was shipped from complainant to respondents under an agreement for sale in December of 1984. Respondents remitted less than the amount of complainant's invoice. Complainant contends that the transaction continued to be a sale at the invoice price, less perhaps an adjustment for condition of the produce upon arrival. Respondents contend that the transaction was changed to a consignment for sale for complainant's account.

Complainant's contention is not established by the evidence in the record. The record shows clearly that complainant's agent Mr. George Zinno gave directions which were inconsistent but could be understood as changing the transaction from a sale to a consignment, the other parties to the transaction so understood those directions, complainant had prompt clear notice of that understanding, and complainant took no action to correct that understanding promptly upon receipt of that notice, as explained below.

When the lettuce was shipped by truck, the temperature range was ordered to be maintained at 34° to 36°, according to the bill of lading (complaint exhibit 7, investigation report exhibit 11). However, the temperature exceeded 36°, and remained at about 38°, beginning about 60 hours or 2½ days, and continuing to the end, about 154 hours or 6½ days, after departure, according to the Ryan recording tape (complaint exhibit 5, investigation report exhibit 3A). The inspection report is complaint exhibit 6, investigation report exhibit 3B.

The record does not show clearly when respondents notified Ball Brokerage Company, when the latter firm notified Tri-Points Western, or when Mr. C.A. Reiman of the latter firm phoned Mr. Zinno of the complainant firm, about the produce, but no issue was raised about the promptness of that notification. In the latter phone call, whenever it took place, Mr. Zinno promised to call Mr. Reiman back. He did so on Wednesday, December 12, at about 2:30 P.M.

Mr. Zinno's affidavit, filed as complainant's opening statement under the shortened procedure, states the following about his phone call with Mr. Reiman on Wednesday afternoon, December 12.

\* \* \* During our telephone conversation I advised Mr. Reiman that [respondent] should *sell the lettuce* and that I should be forwarded a copy of the USDA inspection along with a copy of the Ryan recording tape *and their accounting* and after my review of those documents *I would settle on a price* with [respondent]. At no time did I ever authorize [respondent] either direct or through the broker in this transaction, Tri Points Western to handle the lettuce for the account of [complainant]. (emphasis added)

There is an inconsistency between the two statements, that an accounting should be forwarded, and that a price would be settled upon after review of documents. Sale and forwarding of an accounting indicates a consignment to respondents as the latter contended. Settling on a price after review of documents indicates a sale to respondents with an adjustment for condition of the produce as complainant contended.

The record shows clearly that Mr. Reiman, who talked to Mr. Zinno, understood Mr. Zinno's directions as changing the transaction to a consignment. The Tri-Points firm issued a second confirmation of the same sale (investigation report exhibits 1E, 3C, 5B, 6D, answer exhibit 2B) also identified in the same affidavit of Mr. Zinno. Notwithstanding complainant's contention to the contrary, that second confirmation clearly shows, accurately or inaccurately, that the transaction was changed from a sale to a consignment. It shows that the "unit price" of \$3.00, plus .65 for cooling, plus .15 for brokerage, was deleted and replaced with a direction to send an account of sale.

The record shows that complainant received the second confirmation promptly after December 12 and did not object to it even though it clearly showed a change in the transaction from a sale to a consignment. A letter from Mr. Reiman to the Department dated February 19, 1985, recites that that second confirmation was sent to "all concerned," and that "Lyn-De Farms didn't contest corrected confirmation." That letter is investigation report exhibit 5, answer exhibit 2. Complainant's opening statement, consisting of Mr. Zinno's affidavit, was prepared after service on complainant of that letter, first with the investigation report, then with the answer. Thus, if complainant did not receive the second confirmation promptly after December 12, or received it but promptly objected that it did not accurately reflect what Mr. Zinno told Mr. Reiman in the phone call on the afternoon of December 12, it is reasonable to expect complainant's opening statement to say so. It does not.

No issue was raised whether the amount remitted was the proceeds of sale net of commission and expenses as usual. However, respondent's accounting (complaint exhibit 4) shows a \$35.00 charge for the USDA inspection. Such inspection is at the expense of the party requesting it. *Monie's Consolidated v. United Fruit & Prod.*, 32 Ag. Dec. 2006 (1973). On that basis, respondent's \$35.00 charge for the inspection is found to be a failure and refusal truly and correctly to account and make full payment promptly, in violation of Section 2(4) of the Act, 7 U.S.C. 499b.

#### Order

Within 30 days of the date of this order, respondents shall pay to complainant as reparation \$35.00 with interest thereon at the rate of 13% per annum from February 1, 1985 until paid.

Copies of this order shall be served on the parties.

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**PINNACLE PRODUCE LTD. v. PRODUCE PRODUCTS, INC.**  
**PACA Docket No. 2-7079.**  
**Order issued November 12, 1987.**

*Order issued by Donald A. Campbell, Judicial Officer.*

#### ORDER ON RECONSIDERATION

In this reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a *et seq.*), an order was issued July 13, 1987, awarding reparation to complainant against respondent. On August 7, 1987, respondent filed a petition for reconsideration. On August 28, 1987, the order of July 13, 1987, was stayed and complainant was granted fifteen days from receipt of the stay order in which to reply to respondent's petition. Complainant's reply was filed on September 23, 1987.

Respondent's objections to the decision and order of July 13, 1987, were fully answered therein, and upon reconsideration we find that the order of July 13, 1987, is supported by the evidence and the law applicable thereto. Accordingly, respondent's petition is dismissed and the stay order of August 28, 1987, is vacated. The reparation awarded in our order of July 13, 1987, shall be paid within thirty days from the date of this order.

Copies of this order shall be served upon the parties.

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**H. J. SAVAGE & SONS v. CHAPMAN PRODUCE CO., INC.**  
PACA Docket No. R-88-7.  
Order Issued November 2, 1987.

*Order issued by Donald A. Campbell, Judicial Officer.*

#### REPARATION ORDER

(Summarized)

In its answer to the complaint, respondent admitted the material allegations of the complaint, including the indebtedness claimed by complainant.

Accordingly, the respondent was ordered to pay to complainant, as reparation, \$10,043.75, plus 13 percent interest thereon per annum from February 1, 1987, until paid.

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**S. STAMOULES, INC., d/b/a STAMOULES PRODUCE CO v. L&P VEGETABLE CORP.**  
PACA Docket No. 2-7587.  
Order Issued November 2, 1987.

*Order issued by Donald A. Campbell, Judicial Officer.*

#### ORDER OF DISMISSAL

(Summarized)

In its answer to the complaint, respondent asserted a counterclaim. Later, complainant notified the Department that it no longer wished to pursue

**WATERFIELD FARMS v. DAVIS DISTRIBUTORS, INC.**

the complaint and authorized the dismissal of the complaint. Respondent notified the Department that it no longer wished to pursue the counterclaim and authorized the dismissal of its counterclaim.

Accordingly, the complaint and counterclaim were dismissed.

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**TELLES, INC. v. CHAPMAN PRODUCE CO., INC.**

PACA Docket No. R-88-12.

Order issued November 5, 1987.

*Order issued by Donald A. Campbell, Judicial Officer.*

**REPARATION ORDER**

(Summarized)

In its answer to the complaint, respondent admitted the material allegations of the complaint, including the indebtedness claimed by complainant.

Accordingly, respondent was order to pay to complainant, as reparation, \$5,608.75, plus 13 percent interest thereon per annum from March 1, 1987, until paid.

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**WATERFIELD FARMS v. DAVIS DISTRIBUTORS, INC.**

PACA Docket No. 2-7513.

Order issued November 12, 1987.

*Order issued by Donald A. Campbell, Judicial Officer.*

**ORDER**

(Summarized)

This proceeding was continued until the Department receives proper notification that respondent's proceeding now pending in the United States Bankruptcy Court has been closed, dismissed, or converted to straight bankruptcy, or that the debts have been discharge through confirmation of a Plan of Arrangement.

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REPARATION DEFAULT ORDERS ISSUED BY  
DONALD A. CAMPBELL, JUDICIAL OFFICER  
(Summarized)

GEORGE S. ADAMS d/b/a ADAMS FRUIT & IMPORTING CO. v  
MELON PRODUCE INC.  
PACA Docket No. RD-88-30.  
Default Order Issued November 9, 1987.

Respondent was ordered to pay complainant, as reparation  
\$81,653.96, plus 13 percent interest per annum thereon from November 1  
1986, until paid.

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AVILA PRODUCE DISTRIBUTORS INC. v. JOHN M. HILLAS d/b/t  
HILLAS PACKING CO.  
PACA Docket No. RD-88-44.  
Default Order Issued November 13, 1987.

Respondent was ordered to pay complainant, as reparation  
\$12,657.40 plus 13 percent interest per annum thereon from April 1, 1987,  
until paid.

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BADLANDS PROVISIONS INC. v. MARTIN AND JONES PRODUCE INC.  
PACA Docket No. RD-88-36.  
Default Order Issued November 10, 1987.

Respondent was ordered to pay complainant, as reparation,  
\$36,843.17 plus 13 percent interest per annum thereon from January 1, 1987,  
until paid.

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C & S FARMS v. TRI-COUNTY PRODUCE INC.  
PACA Docket No. RD-88-45.  
Default Order Issued November 13, 1987.

Respondent was ordered to pay complainant, as reparation, \$4,694.40  
plus 13 percent interest per annum thereon from February 1, 1987, until paid.

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REPARATION DEFAULT ORDERS

**CALIFORNIA SPROUTS AND CELERY CO. v. HERES NOW.**

PACA Docket No. RD-88-39.

Default Order issued November 12, 1987.

Respondent was ordered to pay complainant, as reparation, \$728.00 plus 13 percent interest per annum thereon from May 1, 1987, until paid.

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**COLORADO POTATO GROWERS EXCHANGE v. MAGNOLIA FRUIT & PRODUCE CO., INC.**

PACA Docket No. RD-87-515.

Order issued November 2, 1987.

**ORDER OF DISMISSAL**

Complainant notified the Department that respondent tendered to complainant a check in full settlement of complainant's claim. Therefore complainant authorized the dismissal of its complaint filed herein.

Accordingly, the complaint was dismissed.

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**DENNIS PRODUCE SALES, INC. v. HAVANA POTATOES CORP.**

PACA Docket No. RD-87-480.

Ruling and Order issued November 2, 1987.

**RULING ON RECONSIDERATION AND STAY ORDER**

In this reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499 *et seq.*), a default order was issued on September 16, 1987, awarding reparation to the complainant in the amount of \$1,300.00. By letter received October 16, 1987, respondent has moved that this matter be reconsidered and reopened.

Respondent has enclosed documents which allegedly demonstrate its freedom from liability. These documents cannot be accepted for filing, as respondent is in default, for which an order has been issued on September 16, 1987. Respondent's motion to reconsider this order is denied, as it was properly issued. However, respondent will have an opportunity to reopen the default and file an answer to the complaint, including the documents it has recently submitted, if respondent presents a good reason why an answer was not filed on time, pursuant to 7 C.F.R. § 47.25(c). Respondent will have ten days from its receipt of this order to file its "good reason" with the Department. Its failure to do so will result in the reissuance of the default order.

Accordingly, the September 16, 1987, default order is hereby stayed.  
Copies of this order shall be served upon the parties.

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**DIXIE GROWERS INC. v. MARTIN AND JONES PRODUCE INC.**  
PACA Docket No. RD-87-510.  
Order issued November 5, 1987.

**ORDER OF DISMISSAL**

Complainant notified the Department that respondent tendered to complainant a check in full settlement of complainant's claim. Therefore, complainant authorized the dismissal of its complaint.

Accordingly, the complaint was dismissed.

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**A. DUDA & SONS INC. v. THE PIONEER FRUIT & COMMISSION CO.**  
PACA Docket No. RD-88-33.  
Default Order issued November 9, 1987.

Respondent was ordered to pay complainant, as reparation, \$4,864.85 plus 13 percent interest per annum thereon from March 1, 1987, until paid.

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**FOREST MUSHROOMS INC. v. HERBS NOW.**  
PACA Docket No. RD-88-40.  
Default Order issued November 12, 1987.

Respondent was ordered to pay complainant, as reparation, \$750.00 plus 13 percent interest per annum thereon from May 1, 1987, until paid.

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**J-B DISTRIBUTING CO. v. DOMINIC PALAZZOLO.**  
PACA Docket No. RD-88-42.  
Default Order issued November 12, 1987.

Respondent was ordered to pay complainant, as reparation, \$3,248.40 plus 13 percent interest per annum thereon from February 1, 1987, until paid.

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REPARATION DEFAULT ORDERS

**J&J PRODUCE CO. v. ANTHONY J. D'ACQUISTO d/b/a TROPIC BANANA CO.**

PACA Docket No. RD-87-406.

Order issued November 9, 1987.

**ORDER REOPENING AFTER DEFAULT**

Respondent failed to file a timely answer to the complaint. Prior to the issuance of a Default Order, respondent filed a motion to reopen the proceeding after default and allow the filing of an answer.

It was concluded that the motion to reopen was filed within a reasonable time, and that good reason was shown why the relief requested in the motion should be granted. Accordingly, respondent's default in the filing of an answer was set aside and respondent was given ten days to file an answer.

[New docket No. is PACA R-88-32.-Editor]

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**LEE BRANDS INC. v. CHAPMAN PRODUCE CO. INC.**

PACA Docket No. RD-88-37.

Default Order issued November 10, 1987.

Respondent was ordered to pay complainant, as reparation, \$421.20 plus 13 percent interest per annum thereon from March 1, 1987, until paid.

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**D. LOI & SON INC. v. ONORATO BROS. INC.**

PACA Docket No. RD-88-32.

Default Order issued November 9, 1987.

Respondent was ordered to pay complainant, as reparation, \$3,729.25 plus 13 percent interest per annum thereon from September 1, 1986, until paid.

DORIS A. GRAYBEAL MENG d/b/a LAKESIDE MARKETING v. TRI-COUNTY PRODUCE INC.  
PACA Docket No. RD-88-46.  
Default Order issued November 13, 1987.

Respondent was ordered to pay complainant, as reparation, \$5,310.00 plus 13 percent interest per annum thereon from February 1, 1987, until paid.

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OSLO POTATO PACKERS INC. v. A & E PRODUCE CORP.  
PACA Docket No. RD-88-34.  
Default Order issued November 10, 1987.

Respondent was ordered to pay complainant, as reparation, \$7,229.25 plus 13 percent interest per annum thereon from December 1, 1986, until paid.

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OSLO POTATO PACKERS INC. v. SOSA PRODUCE CORP.  
PACA Docket No. RD-88-35.  
Default Order issued November 10, 1987.

Respondent was ordered to pay complainant, as reparation, \$4,385.00 plus 13 percent interest per annum thereon from January 1, 1987, until paid.

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OSLO POTATO PACKERS INC. v. SOUTHWEST MARKETING INT'L INC.  
PACA Docket No. RD-88-43.  
Default Order issued November 12, 1987.

Respondent was ordered to pay complainant, as reparation, \$19,213.00 plus 13 percent interest per annum thereon from April 1, 1987, until paid.

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REPARATION DEFAULT ORDERS

PAWEL DISTRIBUTING CO. v. GERONIMO'S INC.  
PACA Docket No. RD-88-29.  
Default Order issued November 9, 1987.

Respondent was ordered to pay complainant, as reparation, \$744.00 plus 13 percent interest per annum thereon from December 1, 1986, until paid.

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JERRY PEPELIS d/b/a JERRY PEPELIS PACKING CO. v. DON A. PELUCCA d/b/a DON PELUCCA  
PACA Docket No. RD-88-38.  
Default Order issued November 10, 1987.

Respondent was ordered to pay complainant, as reparation, \$4,446.00, plus 13 percent interest per annum thereon from May 1, 1986, until paid.

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PREMIUM FRESH FARMS v. MORGAN W. PILGRIM d/b/a POOR BOYS FRUIT MARKET.  
PACA Docket No. RD-88-48.  
Default Order issued November 13, 1987.

Respondent was ordered to pay complainant, as reparation, \$235.00, plus 13 percent interest per annum thereon from December 1, 1986, until paid.

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RYAN'S POTATOES, INC. v. LEGRANT MORRIS d/b/a CLEVELAND FRUIT MARKET.  
PACA Docket No. RD-87-512.  
Order issued November 2, 1987.

STAY ORDER

A default order was issued October 8, 1987, awarding reparation to complainant in the amount of \$2,803.60. Respondent filed an answer on October 6, 1987, which was not processed until after the issuance of the default order. Respondent's proposed answer was not accepted, as respondent did not provide a "good reason" why his answer was not filed on time.

Respondent was given ten days to file with the Department a "good reason" why a timely answer was not submitted. The default order of October 8, 1987, was stayed until the issuance of a further order in this proceeding.

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JOHN A. STEPHENS d/b/a FROSTPROOF GROVES v. SUN GLO INC.  
PACA Docket No. RD-88-47.  
Default Order Issued November 13, 1987.

Respondent was ordered to pay complainant, as reparation, \$12,921.50 plus 13 percent interest per annum thereon from May 1, 1987, until paid.

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RAY H. WRIGHT AND SAMMY C. WRIGHT d/b/a WRIGHT BROS.  
TOMATO CO. v. TWIG OF MIAMI INC. a/t/a BEST PRODUCE.  
PACA Docket No. RD-88-31.  
Default Order Issued November 9, 1987.

Respondent was ordered to pay complainant, as reparation, \$13,040.00 plus 13 percent interest per annum thereon from September 1, 1986, until paid.

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WORLD VARIETY PRODUCE INC. v. SUNSPROUT HYDROPONICS OF  
MARYLAND INC.  
PACA Docket No. RD-88-41.  
Default Order Issued November 12, 1987.

Respondent was ordered to pay complainant, as reparation, \$4,370.50 plus 13 percent interest per annum thereon from April 1, 1987, until paid.

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## PLANT QUARANTINE ACT

In re: ANAN IMPORT AND EXPORT, INC.

PQ Docket No. 305.

Dismissal filed November 10, 1987.

Albert Oakley, for Complainant.

Respondent, pro se.

Dismissal issued by Dorotica A. Baker, Administrative Law Judge.

### DISMISSAL

Complainant's Motion to Dismiss, filed November 6, 1987, is hereby granted, and, the Complaint filed February 10, 1987, is hereby dismissed.

Copies hereof shall be served upon the parties.

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In re: RAJPATIE BACCHUS.

PQ Docket No. 201.

Decision and Order filed September 14, 1987.

Importation of bittermelons without permit--Failure to file answer.

Cynthia Koch, for Complainant.

Respondent, pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

### DECISION AND ORDER

This proceeding was instituted under the Plant Quarantine Act of August 20, 1912, as amended, (Act) (7 U.S.C. §§ 151-164a and 167) and regulations promulgated thereunder (7 C.F.R. § 319.56 *et seq.*) by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent had violated the Act and sections 319.56(c) and 319.56-2(e) of the Code of Federal Regulations (7 C.F.R. §§ 319.56-2(e)).

Copies of the complaint and the Rules of Practice governing proceedings under the Act were served upon respondent on March 18, 1986, by certified mail in conformity with section 1.147(b)(3) of the Rules of Practice (7 C.F.R. § 1.147(b)(3)).

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) applicable to this proceeding, respondent was informed in the complaint and the letter of service the respondent had twenty (20) days after receipt of this complaint to file an answer with the Hearing Clerk. Respondent was also informed that failure to file an answer to, or plead specifically to, any allegation in the complaint, would constitute an admission of such allegation. Additionally, respondent was informed that a failure to file an answer within the time allowed therefor would constitute an admission of the allegations in the complaint and a waiver of hearing. More than twenty (20) days have elapsed since respondent was served with the complaint. Respondent has not filed an answer. Accordingly, under the plain provisions of the Rules of Practice, a default decision should be granted in this case. This Decision and

Order, therefore, is issued pursuant to sections 1.136 and 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. §§ 1.136 and 1.139).

Accordingly, the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as the findings of fact.

#### Findings of Fact

1. Rajpatic Bacchus, herein referred to as the respondent, is an individual whose address is 565 Beach 64th Street, Queens, New York 11692.

2. On or about October 11, 1985, the respondent imported into the United States at John F. Kennedy International Airport, Jamaica, New York, from Guyana, approximately three pounds of bittermelons, in violation of section 319.56(e) of the regulations (7 C.F.R. § 319.56-2(e) of the regulations (7 C.F.R. § 319.56-2(e))).

#### Conclusion

By reason of the facts in the findings of fact set forth above, respondent has violated the Act and regulations promulgated thereunder. Therefore, the following order is issued.

#### Order

Respondent is hereby assessed a civil penalty of seven hundred and fifty dollars (\$750.00) which shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

U.S. Department of Agriculture  
Animal and Plant Health Inspection Service  
Field Servicing Office, Accounting Section  
Butler Square West, 5th Floor  
100 North Sixth Street  
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 10, 1987.-Editor]

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In re: **FILOMONA BAUTISTA.**

PQ Docket No. 325.

Default Decision and Order filed October 5, 1987.

Importation of mangoes without permit--Failure to file answer.

Lori Montfort, for Complainant.

Respondent, pro se.



FILOMONA BAUTISTA

**DEFAULT DECISION AND ORDER**

This proceeding was instituted under the Plant Quarantine Act of August 20, 1912, as amended (Act) (7 U.S.C. §§ 151-164a and 167) by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent violated section 319.56-2(2) of the regulations (7 C.F.R. § 319.56-2(e)) issued under the Act. A copy of the complaint and the rules of practice governing proceedings under the Act were served by certified mail on respondent by the Hearing Clerk on April 18, 1987.

Respondent was informed in the complaint and in the letter of service that an answer should be filed with the Hearing Clerk within twenty (20) days after receipt of the complaint, the failure to deny, otherwise respond or plead specifically to any allegation in the complaint would constitute an admission of such allegation, and the failure to file an answer within the prescribed time would constitute an admission of the allegations in the complaint and waiver of hearing. The letter of service also advised respondent that failure to request an oral hearing within the time for filing an answer would constitute a waiver of an oral hearing. Respondent has failed to respond in any manner to allegations in the complaint and has failed to request an oral hearing.

Respondent's failure to file an answer within the time prescribed by section 1.136(a) of the rules of practice (7 C.F.R. § 1.136(a)) constitutes an admission of the allegations in the complaint pursuant to section 1.136(c) of the rules of practice (7 C.F.R. 1.136(c)) and a waiver of hearing pursuant to section 1.139 of the rules of practice (7 C.F.R. § 1.139). Because no basis for a hearing exists, the material allegations of fact in the complaint are adopted and set forth as the Findings of Fact.

**Findings of Fact**

1. Filomona Bautista, respondent, is an individual whose mailing address is 128 Wood Avenue, Bridgeport, Connecticut 06605.
2. On or about May 21, 1986, respondent imported four (4) pounds of mangoes into the United States from the Philippines in violation of section 319.56-2(e) of the regulations (7 C.F.R. § 319.56-2(e)) because the mangoes were not imported under permit.

**Conclusion**

Respondent failed to respond to the allegations of the complaint. By reason of the Findings of Fact set forth above, respondent has violated the Act and the regulations issued under the Act. Therefore, the following Order is issued.

**Order**

Filomona Bautista is hereby assessed a civil penalty of five hundred dollars (\$500.00), which shall be payable to the "Treasurer of the United States" by certified check or money order and which shall be mailed within thirty days (30) from the effective date of this Order to:

USDA, APHIS Field Servicing Office

Accounting Section, Butler Square West  
5th Floor, 100 North 6th Street  
Minneapolis, Minnesota 55403

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 325.

This Order shall have the same force and effect as if entered after full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon respondent, unless respondent appeals to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 23, 1987.-Editor]

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In re: CUNARD LINES.

PQ Docket No. 314.

Default Decision and Order filed October 13, 1987.

Removal of foreign garbage from ship in improper receptacles--Failure to file answer.

Lori Morfett, for Complainant.

Respondent, pro se.

Default Decision and Order issued by Edward S. Bernstein, Administrative Law Judge.

#### DEFAULT DECISION AND ORDER

This proceeding was instituted under the Act of February 2, 1903, as amended (21 U.S.C. § 111) and the Federal Plant Pest Act, as amended (7 U.S.C. § 150aa *et seq.*), the Acts, by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent violated regulations (7 C.F.R. § 330.400 and 9 C.F.R. § 94.5) issued under the Acts. A copy of the complaint and the rules of practice governing proceedings under the Acts were served by certified mail on respondent by the Hearing Clerk on March 11, 1987.

Respondent was informed in the complaint and in the letter of service that an answer should be filed with the Hearing Clerk within twenty (20) days after receipt of the complaint, the failure to deny, otherwise respond or plead specifically to any allegation in the complaint would constitute an admission of such allegation, and that failure to file an answer within the prescribed time would constitute an admission of the allegations in the complaint and waiver of hearing. Respondent has failed to respond in any manner to allegations in the complaint and has failed to request an oral hearing.

Respondent's failure to file an answer within the time prescribed by section 1.136(a) of the rules of practice (7 C.F.R. § 1.136(a)) constitutes an admission of the allegations in the complaint pursuant to section 1.136(c) of the rules of practice (7 C.F.R. 1.136(c)) and a waiver of hearing pursuant to section 1.139 of the rules of practice (7 C.F.R. § 1.139). Because no basis for a hearing exists, the material allegations of fact in the complaint are adopted and set forth as the Findings of Fact.

JOSE ORDONIA DOMINGUEZ

**Findings of Fact**

1. Cunard Lines, respondent, is a company whose mailing address is P.O. Box 1960, Pier 1, San Juan, Puerto Rico 00903.

2. Respondent's agent for purpose of service of process of this complaint is Caribe Shipping, P.O. Box 3267, San Juan, Puerto Rico 00904.

3. On or about October 8, 1984, respondent removed garbage from the (BR) Cunard Countess, a vessel owned by respondent, in violation of section 330.400(b)(1) of the regulations (7 C.F.R. § 330.400(b)(1)) and section 94.5 of the regulations (9 C.F.R. § 94.5) because respondent failed to unload the garbage in tight, leak-proof receptacles, under the direction of an Animal and Plant Health Inspection inspector, to an approved facility for incineration, sterilization, or grinding as required.

**Conclusion**

Respondent failed to respond to the allegations of the complaint. By reason of the Findings of Fact set forth above, respondent has violated the Act and the regulations issued under the Act. Therefore, the following Order is issued.

**Order**

Response Cunard Lines is hereby assessed a civil penalty of one thousand dollars (\$1,000.00), which shall be payable to the 'Treasurer of the United States' by certified check or money order and which shall be forwarded within thirty (30) days from the effective date of this Order to:

USDA, APHIS Field Servicing Office  
Accounting Section, Butler Square West  
5th Floor, 100 North 6th Street  
Minneapolis, Minnesota 55403

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 314.

This Order shall have the same force and effect as if entered after full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon respondent, unless respondent appeals to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 25, 1987.-Editor]

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In re: JOSE ORDONIA DOMINGUEZ.  
PQ Docket No. 261.  
Decision and Order filed September 14, 1987.

Importation of mangoes without permit--Failure to file answer.

Robert Brossard, for Complainant.  
Respondent, pro se.

## **DECISION AND ORDER**

### **Preliminary Statement**

This proceeding was instituted under the Act of August 20, 1912, as amended (Act) (7 U.S.C. §§ 151-164a and 167), by a complaint file by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent violated section 319.56-2(e) of the regulations promulgated thereunder (7 C.F.R. § 319.56-2(e)). Copies of the complaint and the Rules of Practice governing proceedings under the Act were served by the Hearing Clerk, by certified mail, upon respondent.

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) applicable to this proceeding, respondent was informed in the complaint and the letter of service that an answer should be filed within twenty (20) days after service of the complaint, and that failure to file an answer would constitute an admission of the allegations in the complaint, under 7 C.F.R. § 1.136(c). The respondent was also informed that failure to file an answer would constitute a waiver of hearing, as provided in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

The respondent filed no answer during the twenty-day period allowed. Respondent's failure to file an answer within the time provided constitutes an admission of the allegations in the complaint, under section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)). Respondent's failure to file an answer also constitutes a waiver of hearing under section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Since respondent is deemed to have admitted the material allegations of fact in the complaint, they are adopted and set forth as the Findings of Fact.

### **Findings of Fact**

1. Jose Ordonia Dominguez, respondent, is an individual whose address is 21517 Conasset Street, Conoga Park, California 91303.
2. On or about October 20, 1985, at San Diego, California respondent imported ten pounds of mangoes from Mexico into the United States in violation of 7 C.F.R. § 319.56-2(e), because the fruit was not accompanied by a permit, as required.

### **Conclusion**

The respondent has failed to file any answer to any of the allegations in the complaint. The consequences of such a failure were explained to the respondent in the complaint and in the letter of service that accompanied it. By his silence respondent has admitted all of the material allegations of fact in the complaint and has waived a hearing.

By reason of the Findings of Fact set forth above, the respondent has violated the Act and regulations promulgated thereunder. The following order is therefore issued.

### **Order**

Respondent Jose Ordonia Dominguez is hereby assessed a civil penalty of seven hundred fifty dollars (\$750), which shall be payable to the

PATRICIA FRANCIS

"Treasurer of the United States" by certified check or money order, and which shall be forwarded to USDA, APHIS Field Servicing Office, Accounting Section, Butler Square West, 5th Floor, 100 North 6th Street, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 20, 1987.-Editor]

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In re: PATRICIA FRANCIS.

PQ Docket No. 257.

Decision and Order filed September 14, 1987.

Imposition of spoliation without permit-Failure to file answer.

Robert Benussard, for Complainant.

Respondent, pro se.

Decision and Order filed September 14, 1989.

#### DECISION AND ORDER

##### Preliminary Statement

This proceeding was instituted under the Act of August 20, 1912, as amended (Act) (7 U.S.C. §§ 151-146a and 167), by a complaint filed by the Department of Agriculture. The complaint alleged that respondent violated section 319.56-2(e) of the regulations promulgated thereunder (7 C.F.R. § 319.56-2(e)). Copies of the Complaint and Rules of Practice governing proceedings under the Act were served by the Hearing Clerk, by certified mail, upon respondent.

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) applicable to this proceeding, respondent was informed in the complaint and the letter of service that an answer should be filed within twenty (20) days after service of the complaint, and that failure to file an answer would constitute an admission of the allegations in the complaint, under 7 C.F.R. § 1.136(c). The respondent was also informed that failure to file an answer would constitute a waiver of hearing, has provided in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

The respondent filed no answer during the twenty-day period allowed. Respondent's failure to file an answer within the time provided constitutes an admission of the allegations in the complaint, under section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)). Respondent's failure to file an answer also constitutes a waiver of hearing under section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Since respondent is deemed to have admitted the material allegations of fact in the complaint, they are adopted and set forth as the Findings of Fact.

### Findings of Fact

1. Patricia Francis, respondent, is an individual whose address is 74 Merrell Avenue, Stamford, Connecticut 06902.

2. On or about February 19, 1986, at Jamaica, New York, respondent imported approximately 50 sapodillas from Trinidad into the United States in violation of 7 C.F.R. § 319.56-2(c), because the sapodillas were not accompanied by a permit, as required.

### Conclusion

The respondent has failed to file any answer to any of the allegations in the complaint. The consequences of such a failure were explained to the respondent in the complaint and in the letter of service that accompanied it. By her silence respondent has admitted all of the material allegations of fact in the complaint and has waived a hearing.

By reason of the Findings of Fact set forth above, the respondent has violated the Act and regulations promulgated thereunder. The following order is therefore issued.

### Order

Respondent Patricia Francis is hereby assessed a civil penalty of five hundred dollars (\$500), which shall be payable to the "Treasurer of the United States" by certified check or money order, and which shall be forwarded to USDA, APHIS Field Servicing Office, Accounting Section, Butler Square West, 5th Floor, 100 North 6th Street, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 11, 1987.-Editor]

In re: CARLYLE MITCHELL.

PQ Docket No. 184.

Decision and Order filed September 14, 1987.

Importation of mangoes without permit--Failure to file answer.

Robert Beussard, for Complainant.

Respondent, pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

### DECISION AND ORDER

#### Preliminary Statement

This proceeding was instituted under the Act of August 20, 1912, as amended (act) (7 U.S.C. §§ 151-164a and 167), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent violated section 319.56-2(c) of the regulations promulgated thereunder (7

CARLYLE MITCHELL

C.F.R. § 319.56-2(c)). Copies of the complaint and the Rules of Practice governing proceedings under the Act were served by the Hearing Clerk, by certified mail, upon respondent.

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) applicable to this proceeding, respondent was informed in the complaint and the letter of service that an answer should be filed within twenty (20) days after service of the complaint, and the failure to file an answer would constitute an admission of the allegations in the complaint, under 7 C.F.R. § 1.136(c). The respondent was also informed that failure to file an answer would constitute a waiver of hearing, as provided in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

The respondent filed no answer during the twenty-day period allowed. Respondent's failure to file an answer within the time provided constitutes an admission of the allegations in the complaint, under section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)). Respondent's failure to file an answer also constitutes a waiver of hearing under section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Since respondent is deemed to have admitted the material allegations of fact in the complaint, they are adopted and set forth as the Findings of Fact.

**Findings of Fact**

1. Carlyle Mitchell, respondent, is an individual whose address is 520 Lincoln Place, Brooklyn, New York 11238.

2. On or about July 3, 1985, at Jamaica, New York, respondent imported ten mangoes from Grenada into the United States in violation of 7 C.F.R. § 319.56-2(c), because the fruit was not accompanied by a permit, as required.

**Conclusion**

The respondent has failed to file any answer to any of the allegations in the complaint. The consequences of such a failure were explained to the respondent in the complaint and in the letter of service that accompanied it. By his silence respondent has admitted all of the material allegations of fact in the complaint and has waived a hearing.

By reason of the Findings of Fact set forth above, the respondent has violated the Act and regulations promulgated thereunder. The following order is therefore issued.

**Order**

Respondent Carlyle Mitchell is hereby assessed a civil penalty of five hundred dollars (\$500), which shall be payable to the "Treasurer of the United States" by certified check or money order, and which shall be forwarded to USDA, APHIS Field Servicing Office, Accounting Section, Butler Square West, 5th Floor, 100 North 6th Street, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer

pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 11, 1987.-Editor]

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In re: OGDEN ALLIED AVIATION SERVICES CORPORATION.  
PQ Docket No. 320.  
Default Decision and Order filed October 8, 1987.

Removal of foreign garbage to other than approved facility--Failure to file answer.

Albert Oakley, for Complainant.

Thomas C. Eller, for Respondent.

*Default Decision and Order issued by Edwin S. Bernsein, Administrative Law Judge.*

#### DEFAULT DECISION AND ORDER

This proceeding was instituted under the Act of February 2, 1903, as amended (21 U.S.C. §§ 111 and 120), the Federal Plant Pest Act, as amended (7 U.S.C. § 150aa *et seq.*), and the Act of August 20, 1912, as amended (7 U.S.C. §§ 151-164a and 167) (Acts) by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that the respondent violated sections 330.400(b)(1) and 94.5(b)(1) of the regulations [7 C.F.R. § 330.400(b)(1) and 9 C.F.R. § 94.5(b)(1), respectively] promulgated thereunder. Copies of the complaint and the Rules of Practice Governing Proceedings under the Act were served by the Hearing Clerk, upon the respondent by certified mail on March 30, 1987.

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) applicable to this proceeding, respondent was informed in the complaint and the letter of service that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer to, or plead specifically to, any allegations in the complaint would constitute an admission of each allegation pursuant to section 1.141 of the Rules of Practice (7 C.F.R. § 1.141) and a waiver of hearing. The letter of service also advised the respondent that failure to request an oral hearing within the time for filing an answer would constitute a waiver on respondent's part of an oral hearing. On April 30, 1987, the respondent was sent, by regular mail, a notice that its answer had not been received by the Hearing Clerk in the allotted time. On May 8, 1987, the respondent filed a letter generally denying the allegations contained in the complaint with the Hearing Clerk.

Respondent's failure to deny or otherwise respond to the allegations in the complaint within the allotted time constitutes an admission of such allegations, pursuant to 1.136(c) of the Rules of Practice [7 C.F.R. § 1.136(c)]. Respondent's failure to request an oral hearing constitutes a waiver of such hearing. There being no basis for a hearing, the material allegations of fact in the complaint are adopted and set forth as the Findings of Fact.



VICTOR MARIO PEREZ

**Findings of Fact**

1. Ogden Allied Aviation Services Corporation, respondent, is a corporation doing business at building 146, John F. Kennedy International Airport, Jamaica, New York 11430.

2. On or about August 29, 1986, the respondent removed foreign origin garbage from an El Al aircraft at the John F. Kennedy International Airport, Jamaica, New York, in violation of sections 330.400(b)(1) and 94.5(b)(1) of the regulations [7 C.F.R. § 330.400(b)(1) and 9 C.F.R. § 94.5(b)(1), respectively], because the foreign origin garbage was not removed to an approved facility for incineration, sterilization, or grinding into an approved sewage system, as required.

**Conclusions**

Respondent has failed to respond within the time prescribed by section 1.136(a) of the Rules of Practice [7 C.F.R. § 1.136(a)] to the allegations of the complaint. By reason of the Findings of Fact set forth above, the respondent has violated the Act and the regulations promulgated thereunder. Therefore, the following Order is issued.

The respondent, Ogden Allied Aviation Services Corporation, is hereby assessed a civil penalty of one thousand dollars (\$1,000.00), which shall be payable to the "Treasurer of the United States," by certified check or money order, and which shall be sent to "USDA, APHIS Field Servicing Office, Accounting Section, Butler Square West, 5th Floor, 100 North 6th Street, Minneapolis, Minnesota 55403," within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 320.

This Order shall have the same force and effect as if entered after full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon the respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 20, 1987.-Editor]

**In re: VICTOR MARIO PEREZ.**

**PQ Docket No. 116.**

**Decision and Order filed October 15, 1987.**

Importation of ham without certificate--Importation of rose bush and mangos without permit--Admission of allegations of complaint.

Joseph Pembroke, for Complainant.

Respondent, pro se.

Decision and Order issued by Dorotea A. Baker, Administrative Law Judge.

### DECISION AND ORDER

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation into the United States of fruits, meats and vegetables from foreign countries and localities (7 C.F.R. §§ 318.37(a); 319.56 *et seq.*) and (9 C.F.R. § 94.9 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* 380.1 *et seq.* and 9 C.F.R. § 93.1 *et seq.*

This proceeding was instituted by a Complaint filed on July 24, 1985, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The Complaint alleged that on or about May 5, 1985, the respondent imported three pounds of ham into the United States at El Paso, Texas from Mexico, in violation of section 94.9(b)(3)(c) of the regulations (9 C.F.R. § 94.9(b)(3)(c)), because the items were imported without a permit.

On August 26, 1985, the respondent filed an Answer responding to and admitting the allegations contained in the Complaint. This admission of the allegations contained in the Complaint constitutes a waiver of hearing (7 C.F.R. § 1.139).

Accordingly, the material allegations alleged in the Complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

#### I

Victor Mario Perez, herein referred to as the respondent, is an individual whose address is 226 Harvard, El Paso, Texas 79907.

#### II

On or about May 5, 1985, respondent imported three pounds of ham from Mexico to El Paso, Texas, in violation of section 94.9(b)(3) of the regulations (9 C.F.R. § 94.9(b)(3)), because the ham was not accompanied by a certificate, as required.

#### III

On or about May 5, 1985, respondent imported fifteen (15) mangoes, from Mexico to El Paso, Texas, in violation of section 319.37-3(a) of the regulations (7 C.F.R. § 319.37-3(a)), because the rosebush from Mexico was imported without a permit, as required.

#### IV

On or about May 5, 1985, respondent imported fifteen (15) mangoes, from Mexico to El Paso, Texas, in violation of section 319.56-2(c) of the regulations (7 C.F.R. § 319.56-2(c)), because the mangoes were imported without a permit, as required.

#### Conclusion

By reason of the facts contained in the Findings of Fact above, the respondent has violated sections 319.37-3(a) and 319.56(c) of the regulations (7 C.F.R. §§ 319.37-3(a) and 319.56-2(c)) and section 94.9(b)(3) of the regulations (9 C.F.R. § 94.9 (b)(3)).

Therefore, the following Order is issued.

**Order**

The respondent, Victor Mario Perez, is hereby assessed a civil penalty of one hundred twenty-five dollars (\$125.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to U.S. Department of Agriculture, APHIS Field Servicing Officer, Accounting Section, Butler Square West, 5th Floor, 100 North Street, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this order. This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon the respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 30, 1987.-Editor]

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In re: ELIEZER T. TAUB.

PQ Docket No. 189.

Decision and Order filed September 14, 1987.

Importation of lesions without permit—Failure to file answer.

Cynthia Koch, for Complainant.

Respondent, *pro se*.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

**DECISION AND ORDER**

This proceeding was instituted under the Plant Quarantine Act of August 20, 1912, as amended, (Act) (7 U.S.C. §§ 151-164a and 167) and regulations promulgated thereunder (7 C.F.R. § 319.56 *et seq.* by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent had violated the Act and sections 319.56(c) and 319.56-2(c) of the Code of Federal Regulations (7 C.F.R. §§ 319.56(c), 319.56-2(c)).

Copies of the complaint and the Rules of Practice governing proceedings under the Act were sent to respondent by certified mail, in conformity with section 1.147(b)(3) of the Rules of Practice (7 C.F.R. § 1.147(b)(3)). The complaint was returned to the Department in an envelope which had the following words written on it: "Returned to sender, accepted by mistake, person has returned on Mar. 3 abroad." Thereafter, on June 30, 1986, in conformity with section 1.147(b)(3) of the Rules of Practice (7 C.F.R. § 1.147(b)(3)), the complaint was served upon respondent by regular mail.

Respondent has failed to file an answer within the time prescribed by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Accordingly, under the plain provision of the Rules of Practice, a default decision should be granted in this case. This Decision and Order, therefore, is issued

pursuant to section 1.136 and 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § § 1.136 and 1.139).

Accordingly, the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as the findings of fact.

#### Findings of Fact

1. Eliezer T. Taub, herein referred to as the respondent, is an individual whose address is 167 Penn Street, Brooklyn, New York 11211.

2. On or about February 21, 1985, the respondent imported into the United States at John F. Kennedy International Airport, Jamaica, New York, from Israel, approximately two lemons in violation of section 319.56(c) of the regulations (7 C.F.R. § 313.56(c)), because the lemons were not imported under permit, as required by section 319.56-2(c) of the regulations (7 C.F.R. § 319.56-2(c)).

#### Conclusion

By reason of the facts in the findings of fact set forth above, respondent has violated the Act and regulations promulgated thereunder. Therefore, the following order is issued.

#### Order

Respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00) which shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

U.S. Department of Agriculture  
Animal and Plant Health Inspection Service  
Field Servicing Office, Accounting Section  
Butler Square West, 5th Floor  
100 North Sixth Street  
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This decision and order became final November 19, 1987.-Editor]

DON DAVID TODD

In re: DON DAVID TODD.  
PQ Docket No. 109.  
Dismissal filed November 18, 1987.

Joseph Penberke, for Complainant.  
Respondent, pro se.  
Dismissal issued by Victor W. Palmer, Chief Administrative Law Judge.

**DISMISSAL**

FOR GOOD CAUSE SHOWN, Complainant's Motion is granted  
and its complaint is hereby dismissed.

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CONSENT DECISIONS ISSUED  
NOVEMBER 1987

(Not published herein.-Editor)

Animal Quarantine and Related Laws

KLEINPETER, Robert L. AQ Docket No. 194. 11/19/87.

Animal Welfare Act

UNIVERSITY of TEXAS Health Science Center at San Antonio. AWA Docket No. 426. 11/5/87.

Federal Meat Inspections Act

BALTZ Brothers Packing Company, Inc. FMIA Docket No. 88-5. 11/24/87.  
WHITE Packing Company, Inc., of Virginia. FMIA Docket No. 88-4. 11/16/87.

Horse Protection Act

BOBO, Charles Alex; Robert C. Westbrook, and Wayne D. Westbrook. HPA Docket No. 190.  
BOBO, Charles Alex; Margarette Reeves. HPA Docket No. 88-1. 11/9/87.  
GILMER, Ray, and John Hornberger. HPA Docket No. 188. With respect to Ray Gilmer, and John Hornberger. 11/19/87.

Packers and Stockyards Act

ADAMS Livestock Co., Inc., Tommy J. Adams, and India G. Adams. P&S Docket No. 6934. 11/17/87.  
BRIZER, M; & Co., Inc. P&S 6716. 11/20/87.  
BROWNING, Douglas. P&S Docket No. 6944. 11/9/87.  
C. B. Livestock, Inc., Tim Maloney, Cora Raasch, d/b/a J-C Livestock and also as C-B Livestock Co., Dale E. Van Wyk, and Van's Livestock, Inc. P&S Docket No. 6797. With respect to Dale E. Van Wyk and Van's Livestock, Inc. 11/13/87.  
CENTRAL Livestock Auction Yard, Inc., a corporation, and John Victorino, and individual. P&S Docket No. 6706. 11/16/87.  
DENSON, Melvin E. P&S Docket No. 6854. 11/23/87.  
DIXIE Livestock, Inc., Tommie Turner, Jr., Inc., Tommie Turner, Jr., Groesville Livestock, Inc., W. Bryant Hargett, Jr., Pates Stockyard, Inc., Circle S. Livestock, Inc., N. Adolph Stewart, and Barbara E. Stewart. P&S Docket No. 6738. 11/6/87.  
MAGNUSSEN, Norman C. P&S Docket No. 6831. 11/19/87.  
MEYER, Harry. P&S Docket No. 6814. 11/25/87.  
NEUROHR, Clayton. P&S Docket No. 6755. 11/13/87.

#### CONSENT DECISIONS

##### Packers and Stockyards Act (Cont.)

CORRIG, Roger. P&S Docket No. 6810. 11/18/87.  
DILL Ments, Inc., Harold Stull, Robert Lindahl, Delta Meat Packing Co.,  
c., Charles Pilch, Kansas City Meat Co., Frank Goldstein, Globe Packing  
Co. and Reuben Krash. P&S Docket No. 6669. With respect to Kansas City  
Meat Co., and Frank Goldstein. 11/13/87. With respect to Delta Meat  
Packing Co., Inc., and Charles Pilch, and Stull Ments, Inc., and Harold Stull.  
11/30/87.

TURNER, Jr., Billy R. P&S Docket No. 6946. 11/2/87.  
REHMAN, William. P&S Docket No. 6936. 11/16/87.  
TURNER Livestock, Inc., M-W Livestock, Inc., and Edward G. Warner.  
P&S Docket No. 6869. 11/2/87.  
TURNER County Livestock Company, Inc., and David L. Bryan. P&S  
Docket No. 6806. 11/20/87.

##### Plant Quarantine Act

CERTIFIED Grocers of Florida, Inc. PQ Docket No. 88-1. 11/18/87.  
EASTERN Airlines. PQ Docket No. 324. 11/24/87.  
WILLIAMS, Joan. PQ Docket No. 260. 11/10/87.

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